

## Office of the Secretary of Defense

## § 215.2

(2) Develop procedures and execute any necessary agreements to implement policy for the operation of non-Federal entities on DoD installations.

(3) Assign responsibilities to the DoD Components to accomplish specific oversight and administrative responsibilities with respect to non-Federal entities operating on DoD installations.

(4) Oversee the activities of the designated DoD EA, assessing the need for continuation, currency, effectiveness, and efficiency of the DoD EA according to 10 U.S.C. 2554 and 2606. Make recommendations for establishment of additional DoD EA assignments and arrangements as necessary.

(b) The Secretary of the Army, as the designated DoD EA, and according to 10 U.S.C. 2554 and 2606, shall:

(1) Perform the audit of the annual ARC accounts and prepare and submit the annual report according to 36 U.S.C. 300110 and this part.

(2) Coordinate support to the BSA and GSUSA according to DoD Instruction 1015.9<sup>5</sup> and this part.

(3) Provide necessary deployment support to ARC according to an approved DoD and ARC MOU. Initially, the Army will cover costs, except those paid by the ARC. The Army will then be reimbursed, upon its request, by the entity directly benefiting from the ARC support.

(4) Designate a point of contact to coordinate matters regarding the DoD EA responsibilities, functions, and authorities.

(c) The Secretary of the Air Force, as the designated DoD EA with responsibility for conducting the AFE program, shall administer the AFE program according to 10 U.S.C. 2554 and 2606, DoD Instruction 1330.13<sup>6</sup>, and this part to include the following:

(1) Annually determine with the other DoD Components and the PDUSD(P&R) the scope of the program.

(2) Budget, fund, and maintain accountability for approved appropriated fund expenses. Develop and implement

supplemental guidance to identify allowable expenses and reimbursements.

(3) Provide centralized services for selecting, declining, scheduling, and processing entertainment groups for overseas.

(4) Designate a point of contact to coordinate matters regarding the DoD EA responsibilities, functions, and authorities.

### PART 215—EMPLOYMENT OF MILITARY RESOURCES IN THE EVENT OF CIVIL DISTURBANCES

Sec.

215.1 Purpose and scope.

215.2 Applicability.

215.3 Definitions.

215.4 Legal considerations.

215.5 Policies.

215.6 Responsibilities.

215.7 Command relationships.

215.8 Organization and administration.

215.9 Providing military resources to civil authorities.

215.10 Funding.

AUTHORITY: Chapter 15 of title 10 U.S.C. (10 U.S.C. 331 *et seq.*).

SOURCE: 37 FR 3637, Feb. 18, 1972, unless otherwise noted.

#### § 215.1 Purpose and scope.

This part establishes uniform Department of Defense policies, assigns responsibilities, and furnishes general guidance for utilizing DoD military and civilian personnel, facilities, equipment or supplies:

(a) In support of civil authorities during civil disturbances within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof.

(b) In other related instances where military resources may be used to protect life or Federal property or to prevent disruption of Federal functions.

#### § 215.2 Applicability.

This part is applicable to all components of the Department of Defense (the Military Departments, Organization of the Joint Chiefs of Staff, Defense Agencies, and the unified and specified commands) having cognizance over military resources which may be

<sup>5</sup>Copies may be obtained at <http://www.dtic.mil/whs/directives/>.

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utilized in accordance with the policies set forth herein.

#### § 215.3 Definitions.

(a) *Civil disturbances* are group acts of violence and disorders prejudicial to public law and order within the 50 States, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof. The term civil disturbance includes all domestic conditions requiring the use of Federal armed forces pursuant to the provisions of chapter 15 of Title 10, United States Code.

(b) *Federal property* is that property which is owned, leased, possessed, or occupied by the Federal Government.

(c) *Military resources* include military and civilian personnel, facilities, equipment, and supplies under the control of a DoD component.

(d) A *Federal function* is any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

#### § 215.4 Legal considerations.

(a) Under the Constitution and laws of the United States, the protection of life and property and the maintenance of public order are primarily the responsibilities of State and local governments, which have the necessary authority to enforce the laws. The Federal Government may assume this responsibility and this authority only in certain limited instances.

(b) Aside from the constitutional limitations of the power of the Federal Government at the local level, there are additional legal limits upon the use of military forces within the United States. The most important of these from a civil disturbance standpoint is the Posse Comitatus Act (18 U.S.C. 1385), which prohibits the use of any part of the Army or the Air Force to execute or enforce the laws, except as authorized by the Constitution or Act of Congress.

(c) The Constitution and Acts of Congress establish six exceptions, generally applicable within the entire territory of the United States, to which

the Posse Comitatus Act prohibition does not apply.

(1) The constitutional exceptions are two in number and are based upon the inherent legal right of the U.S. Government—a sovereign national entity under the Federal Constitution—to insure the preservation of public order and the carrying out of governmental operations within its territorial limits, by force if necessary.

(i) *The emergency authority.* Authorities prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disasters, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situations.

(ii) *Protection of Federal property and functions.* Authorizes Federal action, including the use of military forces, to protect Federal property and Federal governmental functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

(2) There are four exceptions to the Posse Comitatus Act based on Acts of Congress.

(i) In the cases of each of the first three of those described, paragraphs (c)(2)(i) (a), (b), and (c) of this section, personal Presidential action, including the issuance of a proclamation calling upon insurgents to disperse and retire peaceably within a limited time, is a prerequisite.

(a) *10 U.S.C. 331.* Authorizes use of the militia and Armed Forces when a State is unable to control domestic violence, and a request for Federal assistance has been made by the State legislature or governor to the President. Implements Article IV, section 4, of the Constitution.

(b) *10 U.S.C. 332.* Authorizes use of the militia and Armed Forces to enforce Federal law when unlawful obstructions or rebellion against the authority of the United States renders ordinary enforcement means unworkable. Implements Article II, section 3, of the Constitution.